

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: KATZ INTERACTIVE CALL PROCESSING
PATENT LITIGATION**

Ronald A. Katz Technology Licensing L.P. v.)	
Comcast Corporation, et al.,)	
C.D. California, C.A. No. 2:07-06996)	MDL No. 1816
(D. Delaware, C.A. No. 1:07-00361))	

REMAND ORDER

Before the Panel:* Pursuant to Panel Rule 10.2, defendants GEICO Corporation, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company (collectively, “GEICO”) move to vacate our order conditionally remanding this action to the District of Delaware, its transferor court.¹ Plaintiff in the action opposes the motion and supports remand.

After considering all argument of counsel, the Panel finds that remand of this action is appropriate. The transferee judge has determined that retention of this action would not serve the purposes of Section 1407. GEICO’s primary arguments against remand are that, in order to conserve judicial resources and prevent inconsistent pretrial rulings, the transferee court should decide (1) seven claim construction issues it has identified as still in dispute; (2) GEICO’s anticipated motions for reconsideration of denial of summary judgment as to the alleged invalidity of two patents; (3) the common *Daubert* issues concerning plaintiff’s damages experts; and (4) GEICO’s motion to strike the supplemental report of plaintiff’s infringement expert. The transferee judge, however, considered the arguments of the parties and found that remand to the transferor district is appropriate.

In considering the question of remand, the Panel consistently gives great weight to the transferee judge’s determination that remand of a particular action at a particular time is appropriate

* Judge John G. Heyburn II took no part in the decision of this matter.

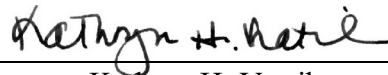
¹ Six groups of co-defendants in the MDL submitted letters supporting GEICO’s opposition to remand: (1) Citizens Financial Group, Inc., Citizens Bank of Pennsylvania, RBS Citizens, N.A., and CCO Investment Services Corporation; (2) Fifth Third Bancorp, Fifth Third Bank, and Fifth Third Bank Central Ohio; (3) Macy’s, Inc. (f/k/a Federated Department Stores, Inc.), Bloomingdale’s By Mail, Ltd., Bloomingdales, Inc., FDS Bank and Macy’s Credit and Customer Services, Inc. (f/k/a FACS Group, Inc.); (4) EchoStar Satellite LLC; (5) Teligence (US), Inc.; Teligence Holdings (US), Inc., and UTEL Networks, Inc.; and (6) Federal Express Corporation, FedEx Corporation, FedEx Corporate Services, Inc., and FedEx Customer Information Services, Inc.

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because the transferee judge, after all, supervises the day-to-day pretrial proceedings. *See, e.g., In re Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008). The transferee judge's suggestion of remand obviously indicates that "he perceives his role under Section 1407 to have ended." *Id.* at 1350 (quoting *In re Holiday Magic Secs. and Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)). Here, the transferee judge issued his decision after briefing by the parties, and he explained his reasons for determining that Section 1407 remand is warranted, which included the completion of discovery, resolution of all pending summary judgment motions filed by GEICO and plaintiff, and his review of the other actions in this MDL. His determination was appropriately based on "the totality of circumstances" involved in the docket. *See In re Brand-Name Prescription Drugs Antitrust Litig.*, 170 F. Supp. 2d 1350, 1352 (J.P.M.L. 2001) ("Whether Section 1407 remand is appropriate for actions or claims in any particular multidistrict docket is based upon the totality of circumstances involved in that docket."). The suggestion of remand is thus well-taken, and we will order remand of this action.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is remanded to the District of Delaware.

PANEL ON MULTIDISTRICT LITIGATION



Kathryn H. Vratil
Acting Chairman

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan

Paul J. Barbadoro
Charles R. Breyer